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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,302	04/05/2001	Ellis L. Kline	13395-0101 (44448-256971)	4139

23594 7590 12/19/2002

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EXAMINER

MELLER, MICHAEL V

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 12/19/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/827,302

Applicant(s)

KLINE, ELLIS L.

Examiner

Michael V. Meller

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/25/2002 has been entered.

Election/Restrictions

The election of species of record is maintained.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sedlacek et al., Int. J. Immunopharmacol. , 9, (7), 1987, abstract,

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Sedlacek et al., Cancer Immunol. Immunother 23 (3), 1986 abstract,
Maiskii et al., Byull eksp biol med 84 (12) 1977 (recd 1978) abstract,
Knop et al., Immunology, 34 (2), 1978, abstract,
Gautam et al., Indian J. Med Res 64 (3), 1976 abstract,
Sedlacek et al., Cancer Immunology Immunotherapy (cancer immunol. Immunother.)
1978 5/3 abstract, or Mobley et al., Res. Commun. Chem. Path. Pharmacol. 1974, 9/1
abstract taken with Green et al., Kline et al. '133 or Kline et al. '863.

The references each teach that an animal (rat or mouse) with a tumor (which according to applicant constitutes cancer, see applicant's comments in paper number 13 page 3) was injected with neuraminidase.

The references do not teach that the neuaminidase is dissolved in a phenol-saline solution or that the enzyme is administered sublingually or nasally.

Green teaches that phenol-saline is a common physiologically-acceptable carrier for compositions, such as finely divided micro-particles of tyrosine, see col. 2, lines 56-65.

The Kline patents teach that neuraminidase is routinely administered by sublingual and intranasal routes, see col. 6.

To administer the enzyme in a phenol-saline solution would have been well within the purview of the skilled artisan since it is well established by Green that phenol saline is a common physiologically-acceptable carrier for compositions, such as finely divided micro-particles of tyrosine.

It also would have been obvious to administer the enzyme sublingually or nasally since the Kline references each establish that it is so well known in the art to administer such an enzyme sublingually or nasally in methods such as treating herpes.

Accordingly, this type of modification would have been well within the purview of the skilled artisan and no more than an effort to optimize results.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

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A handwritten signature in black ink, appearing to read 'M. Meller', with a stylized flourish at the end.

Michael V. Meller
Primary Examiner
Art Unit 1654

MVM
December 13, 2002